

create a ubiquitous service. Roaming would only enhance their service offerings. Cellular carriers provided access to their networks in order to gain reciprocal roaming agreements. However, as noted above, the current market in wireless provides a great incentive for existing cellular carriers to try to maintain their head start and to delay a ubiquitous PCS offering for as long as possible. While other PCS providers are also a source for roaming agreements, they will not offer the ubiquity that the current cellular providers offer because they will just be starting their service. Thus, the roaming that other PCS providers offer is less desirable.

A solution to this significant problem would be achieved by allowing PCS providers to offer their customers access to wireless service on cellular analog networks (AMPS). This would be done by the use of a dual frequency/mode handset. Cellular companies would benefit from the additional revenue from "PCS roamers" while PCS customers would benefit by having access to a ubiquitous wireless network service. This concept is similar to the Commission's position on cellular head start through the reselling of cellular service.³⁸ Because the

³⁸ In the Matter of Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-133, Notice of Proposed Rulemaking and Order, 6 FCC Rcd. 1719, para. 16, 1991 ("With respect to facilities-based

service has now evolved to a national scope, it is critical that PCS providers be given a fair opportunity to compete with cellular providers which have ten to twelve years head start. By doing so, the Commission will enhance auction values and provide PCS an opportunity to develop into a fully competitive service.

We note that the Commission cited our ex parte on this issue as relating to our position to cellular resale. "It is possible that a new PCS licensee may wish to resell cellular service by providing subscribers with a handset that is compatible with cellular and PCS technology, while the PCS licensee is constructing its own PCS facilities."³⁹ Although roaming is in a sense a type of cellular resale, we do not

competitors in the cellular industry, one important public interest reason for prohibiting resale restrictions is to offset any competitive advantage one carrier may have because it is granted a construction permit prior to its competitor. Indeed, no one disputes the value of requiring resale prior to the time the second carrier in the market begins providing service to the public over its own facilities. If the lag time is significant between the first and second carrier's start of operations, the first carrier will have a significant opportunity to expand its coverage area while the second one builds out its system. Therefore, the rationale that supports resale of a competitor's services can continue to exist even after the second carrier's initial facility becomes operational.... However, once the second carrier is fully operational the rationale for prohibiting resale restrictions between facilities-based licensees may cease to exist." See also 47 CFR. §22.914.

³⁹ NPRM, para. 137, n. 251.

envision reselling the cellular service of each cellular licensee in each territory in which one of our PCS customers roam. That would be a very cumbersome process to administer. Rather, we want cellular providers to be required to enter into roaming agreements with PCS providers as described above in order to provide the ubiquity necessary for PCS to compete with entrenched cellular providers.

XI. RESALE IS IN THE PUBLIC INTEREST WITH A LIMITED EXCEPTION BETWEEN LICENSEES SERVING THE SAME TERRITORY.

The Commission seeks comment on resale issues related to CMRS providers other than cellular providers.⁴⁰

Under the cellular resale regulations, a facilities-based cellular licensee has a limited obligation to resell its service to its facilities-based competitor.⁴¹ The requirement that the facilities-based licensees provide resale capacity to each other was established to offset any competitive advantage one carrier may have because it was granted a construction permit prior to its competitor.⁴² The Commission

⁴⁰ NPRM, para. 137.

⁴¹ 47 CFR §22.914.

⁴² In the Matter of Petitions for Rulemaking Concluding Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, para. 5, 1992 ("Cellular Resale Order").

later limited the resale requirement between facilities-based providers⁴³ to the five year fill-in period. In the NPRM proposing this rule change the Commission explained that eliminating this resale requirement between facilities-based carriers once the second carrier in the market is fully operational:

1) promotes the maximum amount of competition between two facilities-based carriers in the market; 2) promotes the Commission's goal of establishing nationwide availability of cellular systems by encouraging carriers to build out their systems; 3) encourages the fullest possible utilization of radio spectrum allocated to cellular service; 4) discourages the carrier requesting resale from its competitor from permanently relying on its competitor's facilities and efforts.⁴⁴

In the area of PCS licenses, since all the licenses are to be auctioned off within a relatively short time of each other, there is no significant "head-start" that supports requiring that PCS licensees serving the same territory resell each other's services while they are building out their own networks. Moreover, the lack of such a resale requirement will encourage licensees to meet their build-out requirements as

⁴³ Id. at para. 27.

⁴⁴ Cellular Resale Order, para. 10.

quickly as possible. Consequently, it is in the public interest not to require resale of PCS services among licensees serving the same territory.

On the other hand, it is in the public interest for there to be unlimited resale of PCS services by non-licensees. The Commission has found that a strong resale market for cellular service fosters competition.⁴⁵ There is no reason to believe otherwise with respect to other CMRS services. Reselling by non-licensees will provide competition and would further the Commission's goal of universality of PCS services. Consequently, the only resale restriction that we support is that licensees should not be required to resell services to other licensees of the same service in the same territory.

⁴⁵ NPRM, para. 138.

XII. CELLULAR PROVIDERS SHOULD CONTINUE TO BE REQUIRED TO PERMIT
RESALE OF THEIR SERVICE, EVEN TO CMRS FACILITIES-BASED
COMPETITORS.

The Commission also requests comment on whether cellular providers should be exempt from providing resale to facilities-based CMRS competitors in their service areas even during the first five years that these competitors hold their licenses.⁴⁶

There should be no such restriction on cellular resale to CMRS licensees. If a PCS licensee also desires to resell cellular service, it simply adds to the competitive market for CMRS in that service territory which is in the public interest. Cellular providers have an enormous head-start in comparison with other CMRS providers. There is no reason to insulate them from this type of competition. However, upon expiration of the 10-year build-out period, the obligation to permit in region PCS licensees to resell cellular service should expire. This sunset provision is consistent with expiration of a resale obligation between facilities-based cellular providers upon expiration of the fill-in period discussed in the previous section.

⁴⁶ Id. at para. 140.

In addition, PCS licensees reselling cellular services should be allowed to migrate cellular customers to PCS services when the PCS systems are operable. The migration should include being able to transfer the end user's number from cellular service to PCS.

The ability to migrate customers from cellular service to PCS will put PCS licensees in a better position to compete with cellular providers and will somewhat mitigate the head-start cellular providers have.

XIII. CONCLUSION.

True competition can only exist if there is regulatory parity. In the absence of regulatory parity competitors will exploit differences in regulatory treatment and consumers will lose the benefits of a competitive market. In establishing rules relating to the equal access and interconnection obligations of CMRS providers, the Commission must remain focused on the Congressional goal of regulatory parity.

Respectfully submitted,

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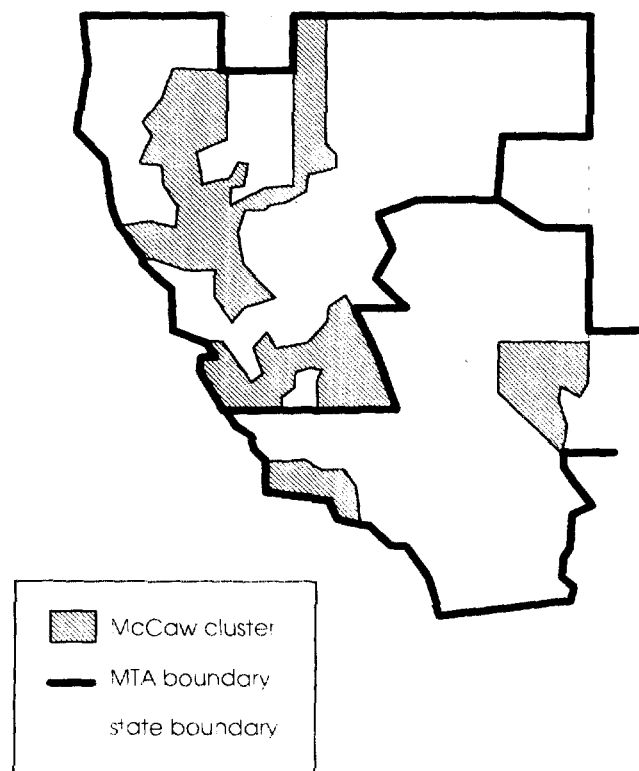
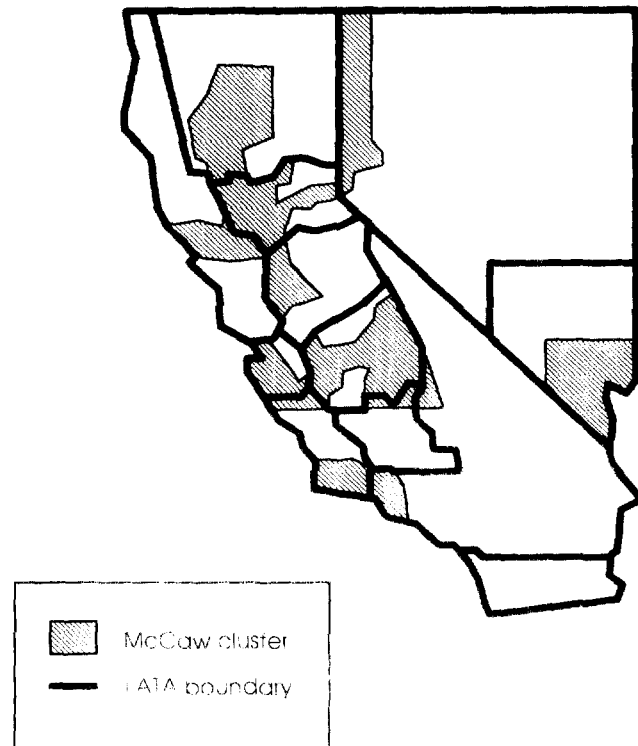
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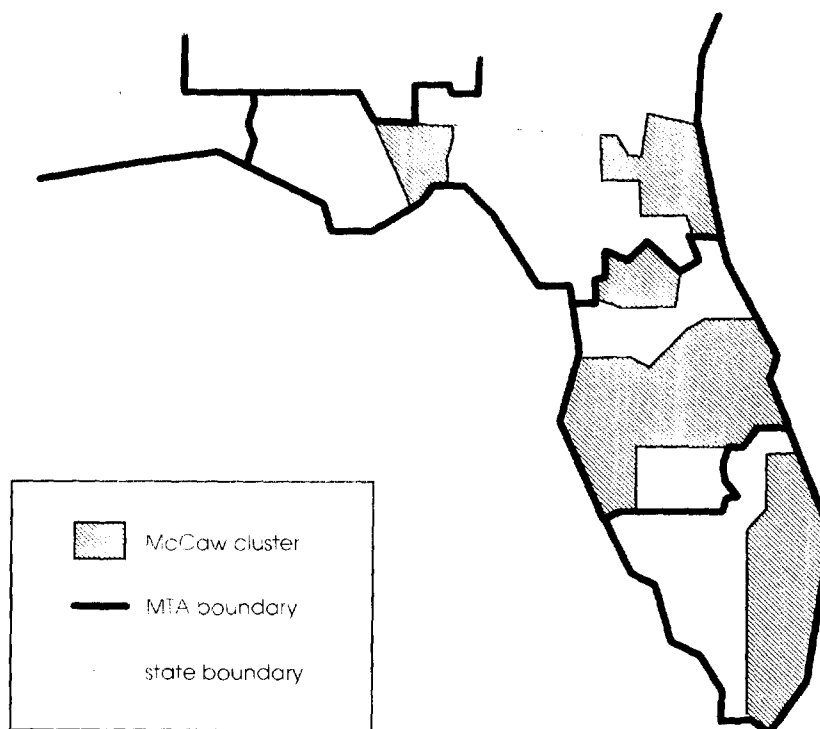
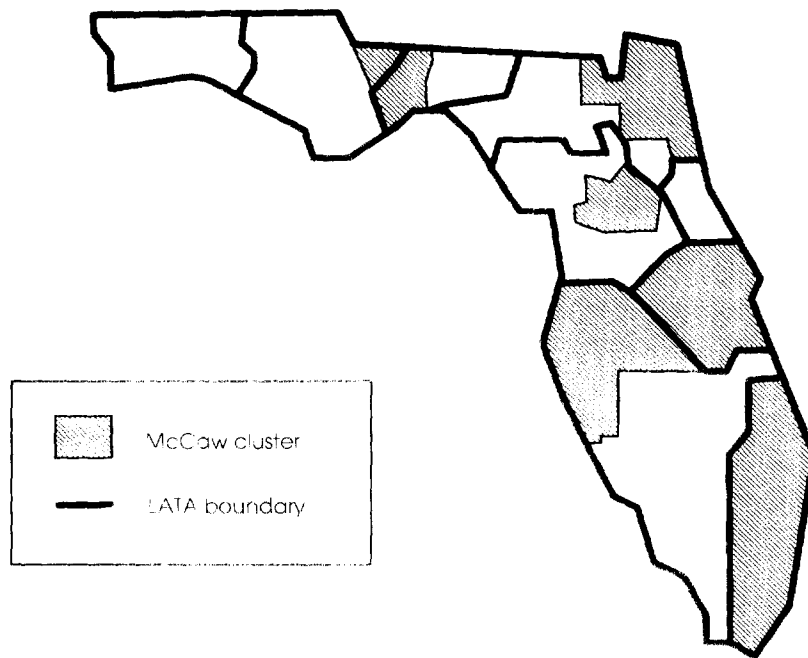
Exhibit A

McCaw's California and Nevada Coverage
with LATA and MTA Boundaries



MAP 2A and MAP 2B.

McCaw's Florida Coverage with LATA and MTA Boundaries



MAP 3A and MAP 3B.

Table 1. Geographic Scope of Granted Cellular Waivers		
Bell Company Date Granted	Geographic Area	Same MTA?
AT&T 1983	New York Metropolitan	yes
	Philadelphia Metropolitan	yes
	Boston and Worcester, MA; Providence, RI	yes
	Baltimore, MD; Washington, D.C.	yes
	Milwaukee, Racine and Kenosha, WI	no
	Memphis and West Memphis, TN	yes
	Cincinnati, Columbus and Dayton, OH	no
	Detroit, MI; Toledo, OH	yes
	Omaha, NE; Western Iowa	yes
Bell Atlantic 1985	Baltimore, MD; Washington, D.C.	yes
PacTel 1986	Fresno, Sacramento and San Francisco, CA	yes
NYNEX 1987	Long Island, Long Branch and Suffolk County, NY; New Brunswick, NJ; Bridgeport, CT	yes
PacTel 1987	Los Angeles and Palm Springs, CA	yes
Southwestern Bell 1987	Chicago, IL; Gary, IN	yes
	Baltimore, MD; Washington, D.C.	yes
Southwestern Bell 1988	St. Joseph, MO; Lawrence and Topeka, KS	yes
NYNEX 1988	Springfield, MA; Connecticut	no
	Boston and Worcester, MA; Providence, RI; Rockingham County, NH	yes
Bell Atlantic 1988	Atlantic City, Cumberland County, Ocean City and Salem County, NJ; Philadelphia, PA	yes
US West 1988	Colorado Springs, Denver, Fort Collins and Greeley, CO	yes
US West 1988	Springfield, Champaign, Urbana, Bloomington and Decatur, IL	yes
Ameritech 1988	Milwaukee, Racine, Sheboygan, Madison, Janesville and Kenosha, WI	no
Ameritech 1988	Springfield, Champaign, Urbana, Bloomington and Decatur, IL	yes
BellSouth 1988	Lexington, KY	yes
PacTel 1988	Detroit, Ann Arbor, Flint, Muskegon, Saginaw, Grand Rapids and Lansing, MI; Toledo, OH	yes
Bell Atlantic 1989	Mercer, Hunterdon and Warren Counties, NJ; Philadelphia, PA	no
US West 1989	Minneapolis, MN	yes
	Duluth, MN; Northwest Wisconsin	yes
BellSouth 1989	Houston and Beaumont, TX	yes
	Orlando, Melbourne, Titusville, Cocoa and Daytona Beach, FL	yes
	Huntsville, AL	yes
	Clarksville, TN; Hopkinsville, KY	yes
Bell Atlantic 1991	Carbon County and Allentown, PA	yes
	Cecil County, MD; Wilmington, DE	yes
Bell Atlantic 1993	El Paso, TX; Las Cruces, NM	yes
	Springfield, MA; Connecticut	no
PacTel 1993	Cleveland, Akron, Lorain, Elyria, Canton and Mansfield, OH	yes